

1 Vanessa R. Waldref
2 United States Attorney
3 Eastern District of Washington
4 Matthew A. Stone
5 Assistant United States Attorney
6 402 East Yakima Ave., Suite 210
7 Yakima, WA 98901
8 Telephone: (509)-454-4425

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUN 30 2022

SEAN F. McAVOY, CLERK
YAKIMA, WASHINGTON DEPUTY

7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF WASHINGTON

9 UNITED STATES OF AMERICA,

Case No.: 1:22-CR-2027-LRS

10 Plaintiff,

Plea Agreement

11 v.
12

13 NATHAN LYNN CLOUD,

14 Defendant.
15

16 Plaintiff United States of America, by and through Vanessa R. Waldref,
17 United States Attorney the Eastern District of Washington, and Matthew A. Stone,
18 Assistant United States Attorney for the Eastern District of Washington, and
19 Defendant Nathan Lynn Cloud ("Defendant"), both individually and by and
20 through Defendant's counsel, Troy J. Lee, agree to the following Plea Agreement.

21 1. Guilty Plea and Maximum Statutory Penalties

22 Defendant agrees to enter a plea of guilty to Count 2 of the Superseding
23 Indictment filed on June 14, 2022, which charges Defendant with Possession with
24 Intent to Distribute a Mixture or Substance Containing a Detectable Amount of
25 Fentanyl, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), a Class C felony.

26 Defendant understands that the following potential penalties apply:

- 27 a. a term of imprisonment of up to 20 years;
28

- b. a term of supervised release of not less than 3 years and up to a lifetime;
- c. a fine of up to \$1,000,000;
- d. denial of certain federal benefits; and
- e. a \$100 special penalty assessment.

2. Supervised Release

Defendant understands that if Defendant violates any condition of Defendant's supervised release, the Court may revoke Defendant's term of supervised release, and require Defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision, up to the following terms:

- a. 5 years in prison if the offense that resulted in the term of Supervised Release is a class A felony,
- b. 3 years in prison if the offense that resulted in the term of Supervised Release is a class B felony, and/or
- c. 2 years in prison if the offense that resulted in the term of Supervised Release is a class C felony.

Accordingly, Defendant understands that if Defendant commits one or more violations of supervised release, Defendant could serve a total term of incarceration greater than the maximum sentence authorized by statute for Defendant's offense or offenses of conviction.

3. The Court is Not a Party to this Plea Agreement

The Court is not a party to this Plea Agreement and may accept or reject it. Defendant acknowledges that no promises of any type have been made to Defendant with respect to the sentence the Court will impose in this matter.

Defendant understands the following:

- a. sentencing is a matter solely within the discretion of the Court;

- b. the Court is under no obligation to accept any recommendations made by the United States or Defendant;
- c. the Court will obtain an independent report and sentencing recommendation from the United States Probation Office;
- d. the Court may exercise its discretion to impose any sentence it deems appropriate, up to the statutory maximum penalties;
- e. the Court is required to consider the applicable range set forth in the United States Sentencing Guidelines, but may depart upward or downward under certain circumstances; and
- f. the Court may reject recommendations made by the United States or Defendant, and that will not be a basis for Defendant to withdraw from this Plea Agreement or Defendant's guilty plea.

4. Potential Immigration Consequences of Guilty Plea

If Defendant is not a citizen of the United States, Defendant understands the following:

- a. pleading guilty in this case may have immigration consequences;
- b. a broad range of federal crimes may result in Defendant's removal from the United States, including the offense to which Defendant is pleading guilty;
- c. removal from the United States and other immigration consequences are the subject of separate proceedings; and
- d. no one, including Defendant's attorney or the Court, can predict with absolute certainty the effect of a federal conviction on Defendant's immigration status.

1 Defendant affirms that Defendant is knowingly, intelligently, and voluntarily
2 pleading guilty as set forth in this Plea Agreement, regardless of any immigration
3 consequences that Defendant's guilty plea may entail.

4 5. Waiver of Constitutional Rights

5 Defendant understands that by entering this guilty plea, Defendant is
6 knowingly and voluntarily waiving certain constitutional rights, including the
7 following:

- 8 a. the right to a jury trial;
- 9 b. the right to see, hear and question the witnesses;
- 10 c. the right to remain silent at trial;
- 11 d. the right to testify at trial; and
- 12 e. the right to compel witnesses to testify.

13 While Defendant is waiving certain constitutional rights, Defendant
14 understands that Defendant retains the right to be assisted by an attorney through
15 the sentencing proceedings in this case and any direct appeal of Defendant's
16 conviction and sentence, and that an attorney will be appointed at no cost if
17 Defendant cannot afford to hire an attorney.

18 Defendant understands and agrees that any defense motions currently
19 pending before the Court are mooted by this Plea Agreement, and Defendant
20 expressly waives Defendant's right to bring any additional pretrial motions.

21 6. Elements of the Offense

22 The United States and Defendant agree that in order to convict Defendant of
23 Possession with Intent to Distribute a Mixture or Substance Containing a
24 Detectable Amount of Fentanyl, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C),
25 the United States would have to prove the following beyond a reasonable doubt.

- 26 a. *First*, on or about January 27, 2022 within the Eastern District
27 of Washington, Defendant knowingly possessed a mixture or
28 substance containing a detectable amount of fentanyl;

1 b. *Second*, Defendant possessed it with the intent to distribute it to
2 another person.

3 7. Factual Basis and Statement of Facts

4 The United States and Defendant stipulate and agree to the following: the
5 facts set forth below are accurate; the United States could prove these facts beyond
6 a reasonable doubt at trial; and these facts constitute an adequate factual basis for
7 Defendant's guilty plea.

8 The United States and Defendant agree that this statement of facts does not
9 preclude either party from presenting and arguing, for sentencing purposes,
10 additional facts that are relevant to the Sentencing Guidelines computation or
11 sentencing, unless otherwise prohibited in this Plea Agreement.

12 On January 27, 2022 the Defendant was arrested for an outstanding warrant.
13 Search incident to arrest seventeen pills believed to contain fentanyl were located
14 on his person. Those pills were sent to the lab and confirmed to contain fentanyl by
15 the DEA western laboratory. A search warrant was executed on the Defendant's
16 phone, also located on his person at the time of his arrest, and text messages were
17 found relating to the distribution of fentanyl pills by the Defendant.

18 The Defendant knowingly possessed the fentanyl laced pills with the intent
19 to distribute them.

20 8. The United States' Agreements

21 The United States Attorney's Office for the Eastern District of Washington
22 agrees that at the time of sentencing, the United States will move to dismiss Count
23 1 of the Superseding Indictment filed on June 14, 2022, which charges Defendant
24 with Possession with Intent to Distribute 5 grams or More of Pure (Actual)
25 Methamphetamine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B)(viii).

26 The United States Attorney's Office for the Eastern District of Washington
27 agrees not to bring additional charges against Defendant based on information in
28 its possession at the time of this Plea Agreement that arise from conduct that is

1 either charged in the Indictment or identified in discovery produced in this case,
2 unless Defendant breaches this Plea Agreement before sentencing.

3 9. United States Sentencing Guidelines Calculations

4 Defendant understands and acknowledges that the United States Sentencing
5 Guidelines (“U.S.S.G.” or “Guidelines”) apply and that the Court will determine
6 Defendant’s advisory range at the time of sentencing, pursuant to the Guidelines.
7 The United States and Defendant agree to the following Guidelines calculations.

8 a. Base Offense Level

9 The United States and the Defendant agree that the base offense level for
10 Possession with Intent to Distribute a Mixture or Substance Containing a
11 Detectable Amount of Fentanyl is 24. U.S.S.G. § 2D1.1(c)(8).

12 b. Acceptance of Responsibility

13 The United States will recommend that Defendant receive a three-level
14 downward adjustment for acceptance of responsibility, pursuant to U.S.S.G.
15 § 3E1.1(a), (b), if Defendant does the following:

- 16 i. accepts this Plea Agreement;
- 17 ii. enters a guilty plea at the first Court hearing that takes
18 place after the United States offers this Plea Agreement;
- 19 iii. demonstrates recognition and affirmative acceptance of
20 Defendant’s personal responsibility for Defendant’s
21 criminal conduct;
- 22 iv. provides complete and accurate information during the
23 sentencing process; and
- 24 v. does not commit any obstructive conduct.

25 The United States and Defendant agree that at its option and on written
26 notice to Defendant, the United States may elect not to recommend a reduction for
27 acceptance of responsibility if, prior to the imposition of sentence, Defendant is
28 charged with, or convicted of, any criminal offense, or if Defendant tests positive

1 for any controlled substance.

2 c. No Other Agreements

3 The United States and Defendant have no other agreements regarding the
4 Guidelines or the application of any Guidelines enhancements, departures, or
5 variances. Defendant understands and acknowledges that the United States is free
6 to make any sentencing arguments it sees fit, including arguments arising from
7 Defendant's uncharged conduct, conduct set forth in charges that will be dismissed
8 pursuant to this Agreement, and Defendant's relevant conduct.

9 d. Criminal History

10 The United States and Defendant have no agreement and make no
11 representations about Defendant's criminal history category, which will be
12 determined by the Court after the United States Probation Office prepares and
13 discloses a Presentence Investigative Report.

14 10. Incarceration

15 The United States agrees to recommend a sentence no higher than the low
16 end of the Guidelines, as calculated by the United States. The United States agrees
17 to recommend that the sentence in this case run concurrently to the Defendant's
18 sentence for his supervised release violation.

19 Defendant may recommend any legal sentence.

20 11. Supervised Release

21 The United States and Defendant each agree to recommend 3 years of
22 supervised release. Defendant agrees that the Court's decision regarding the
23 conditions of Defendant's Supervised Release is final and non-appealable; that is,
24 even if Defendant is unhappy with the conditions of Supervised Release ordered by
25 the Court, that will not be a basis for Defendant to withdraw Defendant's guilty
26 plea, withdraw from this Plea Agreement, or appeal Defendant's conviction,
27 sentence, or any term of Supervised Release.

1 The United States and Defendant agree to recommend that in addition to the
2 standard conditions of supervised release imposed in all cases in this District, the
3 Court should also impose the following conditions:

- 4 a. The United States Probation Officer may conduct, upon
5 reasonable suspicion, and with or without notice, a search of
6 Defendant's person, residences, offices, vehicles, belongings,
7 and areas under Defendant's exclusive or joint control.
8 b. Defendant shall participate and complete such drug testing and
9 drug treatment programs as the Probation Officer directs.
10 c. Defendant shall complete mental health evaluations and
11 treatment, including taking medications prescribed by the
12 treatment provider. Defendant shall allow reciprocal release of
13 information between the Probation Officer and the treatment
14 provider. Defendant shall contribute to the cost of treatment
15 according to the Defendant's ability.

16 12. Criminal Fine

17 The United States and Defendant may make any recommendation
18 concerning the imposition of a criminal fine. Defendant acknowledges that the
19 Court's decision regarding a fine is final and non-appealable; that is, even if
20 Defendant is unhappy with a fine ordered by the Court, that will not be a basis for
21 Defendant to withdraw Defendant's guilty plea, withdraw from this Plea
22 Agreement, or appeal Defendant's conviction, sentence, or fine.

23 13. Mandatory Special Penalty Assessment

24 Defendant agrees to pay the \$100 mandatory special penalty assessment to
25 the Clerk of Court for the Eastern District of Washington, pursuant to 18 U.S.C.
26 § 3013.

27 //

1 14. Denial of Federal Benefits

2 Defendant understands that by entering this plea of guilty, Defendant is no
3 longer eligible for assistance under any state program funded under part A of Title
4 IV of the Social Security Act (concerning Temporary Assistance for Needy
5 Families) or benefits under the food stamp program or any state program carried
6 out under the Food Stamp Act. 21 U.S.C. § 862a. Defendant also understands that
7 the Court may deny Defendant's eligibility for any grant, contract, loan,
8 professional license, or commercial license provided by an agency of the United
9 States or by appropriated funds of the United States. 21 U.S.C. § 862.

10 15. Payments While Incarcerated

11 If Defendant lacks the financial resources to pay the monetary obligations
12 imposed by the Court, Defendant agrees to earn money toward these obligations by
13 participating in the Bureau of Prisons' Inmate Financial Responsibility Program.

14 16. Additional Violations of Law Can Void Plea Agreement

15 The United States and Defendant agree that the United States may, at its
16 option and upon written notice to the Defendant, withdraw from this Plea
17 Agreement or modify its sentencing recommendation if, prior to the imposition of
18 sentence, Defendant is charged with or convicted of any criminal offense or tests
19 positive for any controlled substance.

20 17. Waiver of Appeal Rights

21 Defendant understands that Defendant has a limited right to appeal or
22 challenge Defendant's conviction and the sentence imposed by the Court.

23 Defendant expressly waives all of Defendant's rights to appeal Defendant's
24 conviction and the sentence the Court imposes.

25 Defendant expressly waives Defendant's right to appeal any fine, term of
26 supervised release, or restitution order imposed by the Court.

27 Defendant expressly waives the right to file any post-conviction motion
28 attacking Defendant's conviction and sentence, including a motion pursuant to 28

1 U.S.C. § 2255, except one based on ineffective assistance of counsel arising from
2 information not now known by Defendant and which, in the exercise of due
3 diligence, Defendant could not know by the time the Court imposes sentence.

4 Nothing in this Plea Agreement shall preclude the United States from
5 opposing any post-conviction motion for a reduction of sentence or other attack
6 upon the conviction or sentence, including, but not limited to, writ of habeas
7 corpus proceedings brought pursuant to 28 U.S.C. § 2255.

8 18. Compassionate Release

9 In consideration for the benefits Defendant is receiving under the terms of
10 this Plea Agreement, Defendant expressly waives Defendant's right to bring any
11 motion for Compassionate Release other than a motion arising from one of the
12 specific bases set forth in this paragraph of this Plea Agreement. The United States
13 retains the right to oppose, on any basis, any motion Defendant files for
14 Compassionate Release.

15 The only bases on which Defendant may file a motion for Compassionate
16 Release in the Eastern District of Washington are the following:

17 a. Medical Condition of Defendant

- 18 i. Defendant is suffering from a terminal illness (i.e., a
19 serious and advanced illness with an end of life
20 trajectory). A specific prognosis of life expectancy (i.e.,
21 a probability of death within a specific time period) is not
22 required. Examples include metastatic solid-tumor
23 cancer, amyotrophic lateral sclerosis (ALS), end-stage
24 organ disease, and advanced dementia; or
25 ii. Defendant is suffering from a serious physical or medical
26 condition, a serious functional or cognitive impairment,
27 or deteriorating physical or mental health because of the
28 aging process that substantially diminishes the ability of

1 the defendant to provide self-care within the environment
2 of a correctional facility and from which Defendant is not
3 expected to recover.

4 b. Age of Defendant

- 5 i. Defendant is at least 65 years old, is experiencing a
6 serious deterioration in physical or mental health because
7 of the aging process; and has served at least 10 years or
8 75 percent of Defendant's term of imprisonment,
9 whichever is less; or
10 ii. Defendant is at least 70 years old and has served at least
11 30 years in prison pursuant to a sentence imposed under
12 18 U.S.C. § 3559(c) for the offense or offenses for which
13 Defendant is imprisoned.

14 c. Family Circumstances

- 15 i. The caregiver of Defendant's minor child or children has
16 died or become incapacitated, and Defendant is the only
17 available caregiver for Defendant's minor child or
18 children; or
19 ii. Defendant's spouse or registered partner has become
20 incapacitated, and Defendant is the only available
21 caregiver for Defendant's spouse or registered partner.

22 d. Subsequent Reduction to Mandatory Sentence

- 23 i. Defendant pleaded guilty to an offense which, on the date
24 of Defendant's guilty plea, carried a mandatory minimum
25 sentence; and
26 ii. after the entry of judgment, the length of the mandatory
27 minimum sentence for Defendant's offense of conviction
28 was reduced by a change in the law; and

1 iii. the application of the reduced mandatory minimum
2 sentence would result in Defendant receiving a lower
3 overall sentence.

4 e. Ineffective Assistance of Counsel

- 5 i. Defendant seeks Compassionate Release based on a
6 claim of ineffective assistance of counsel arising from
7 information that Defendant both
- 8 1. did not know at the time of Defendant's guilty
 - 9 plea, and
 - 10 2. could not have known, in the exercise of due
 - 11 diligence, at the time the Court imposed sentence.

12 19. Withdrawal or Vacatur of Defendant's Plea

13 Should Defendant successfully move to withdraw from this Plea Agreement
14 or should Defendant's conviction be set aside, vacated, reversed, or dismissed
15 under any circumstance, then:

- 16 a. this Plea Agreement shall become null and void;
- 17 b. the United States may prosecute Defendant on all available
18 charges;
- 19 c. The United States may reinstate any counts that have been
20 dismissed, have been superseded by the filing of another
21 charging instrument, or were not charged because of this Plea
22 Agreement; and
- 23 d. the United States may file any new charges that would
24 otherwise be barred by this Plea Agreement.

25 The decision to pursue any or all of these options is solely in the discretion
26 of the United States Attorney's Office.

1 Defendant agrees to waive any objections, motions, and defenses Defendant
2 might have to the United States' decision about how to proceed, including a claim
3 that the United States has violated Double Jeopardy.

4 Defendant agrees not to raise any objections based on the passage of time,
5 including but not limited to, alleged violations of any statutes of limitation or any
6 objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth
7 Amendment.

8 20. Waiver of Attorney Fees and Costs

9 Defendant agrees to waive all rights Defendant may have under the "Hyde
10 Amendment," Section 617, P.L. 105- 119 (Nov. 26, 1997), to recover attorneys'
11 fees or other litigation expenses in connection with the investigation and
12 prosecution of all charges in the above-captioned matter and of any related
13 allegations (including, without limitation, any charges to be dismissed pursuant to
14 this Plea Agreement or any charges previously dismissed or not brought as a result
15 of this Plea Agreement).

16 21. Integration Clause

17 The United States and Defendant acknowledge that this document
18 constitutes the entire Plea Agreement between the United States and Defendant,
19 and no other promises, agreements, or conditions exist between the United States
20 and Defendant concerning the resolution of the case.


21 This Plea Agreement is binding only on the United States Attorney's Office
22 for the Eastern District of Washington, and cannot bind other federal, state, or local
23 authorities.

24 The United States and Defendant agree that this Agreement cannot be
25 modified except in a writing that is signed by the United States and Defendant.

26 Approvals and Signatures

27 Agreed and submitted on behalf of the United States Attorney's Office for
28 the Eastern District of Washington.


1 Vanessa R. Waldref
2 United States Attorney

3 
4 _____
5 Matthew A. Stone
6 Assistant United States Attorney

6/30/22

Date


7
8 I have read this Plea Agreement and I have carefully reviewed and discussed
9 every part of this Plea Agreement with my attorney. I understand the terms of this
10 Plea Agreement. I enter into this Plea Agreement knowingly, intelligently, and
11 voluntarily. I have consulted with my attorney about my rights, I understand those
12 rights, and I am satisfied with the representation of my attorney in this case. No
13 other promises or inducements have been made to me, other than those contained
14 in this Plea Agreement. No one has threatened or forced me in any way to enter
15 into this Plea Agreement. I agree to plead guilty because I am guilty.

16
17 
18 _____
19 Nathan Lynn Cloud
20 Defendant

6/30/22

Date

21 I have read the Plea Agreement and have discussed the contents of the
22 agreement with my client. The Plea Agreement accurately and completely sets
23 forth the entirety of the agreement between the parties. I concur in my client's
24 decision to plead guilty as set forth in the Plea Agreement. There is no legal
25 reason why the Court should not accept Defendant's guilty plea.

26 
27 _____
28 Troy J. Lee
Attorney for Defendant

6/30/22

Date